THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20054 OF 2006

Dated: 25th SEPTEMBER, 2006

Between :

Y. Kishan .. Petitioner

And

1. The Chief Manager, Asset Recovery Branch, State Bank of Hyderabad, Reddy Hostel Road, Hanuman Tekdi, Hyderabad-01 and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20054 OF 2006

ORDER :

This writ petition is filed questioning the auction notice dated 26-9-2006 issued by the respondents bringing the secured assets to sale under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

I have heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondent Bank.

It is not in dispute that the petitioner having availed loan for a sum of Rs.35 lakhs, committed default in discharging the same. Consequently, the respondents having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act, 2002) issued a notice dated 2-8-2003 under Section 13 (2) of the Securitisation Act, 2002 calling upon the petitioner to pay the amounts due, failing which they would be proceeded against the secured assets. Since the petitioner failed to make payments, the notice under Section 13 (4) of the Securitisation Act, 2002 was issued on 15-11-2003 and consequently the impugned sale notice was issued proposing to conduct auction on 26-9-2006.

The petitioner contends that since the petitioner has already filed O.A.No.123 of 2005 which is pending on the file of the Debts Recovery Tribunal, Hyderabad for recovery of the amounts from the petitioner, it

is not open to the respondents simultaneously to proceed under the provisions of the Securitisation Act, 2002. It is contended that the respondents cannot be permitted to issue the sale notice under the Securitisation Act, 2002 without withdrawing the proceedings pending before the Tribunal in terms of the 1st proviso to Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the RDB Act, 1993').

The said proviso inserted to Section 19 (1) of the RDB Act, 1993 under the Enforcement of Security Interest And Recovery of Debts Laws (Amendment) Act, 2004 runs as under :

> *"Provided that* ***the bank or financial institution may, with the permission of the Debts Recovery Tribunal****, on an application made by it,* ***withdraw the application****, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004* ***for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*** *(54 of 2002),* ***if no such action had been taken earlier under that Act."*** *(emphasis supplied)*

On a mere reading of the said proviso, it is clear that the permission of the Tribunal for withdrawal of the Application for the purpose of taking action under the Securitisation Act, 2002 is necessary, if no such action had been taken under that Act. Obviously, the concluding words "that Act" refer to Securitisation Act, 2002. There can also be no dispute about the fact that the words "taking action under the Securitisation Act" refer to issuance of notice under Section 13 (2) of the Securitisation Act, 2002. Hence, the 1st proviso if analysed with particular reference to the words "if no such action had been taken under that Act" in my considered opinion, there is no requirement to take permission from the Tribunal for withdrawal of an

application pending before it if the notice under Section 13 (2) was issued prior to filing of the Application.

In the case on hand, since admittedly the proceedings under the Securitisation Act, 2002 were initiated much prior to filing of O.A.No.123 of 2005, the respondents are entitled to issue the impugned sale notice without withdrawing the proceedings pending before the Tribunal.

The other contentions raised by the petitioner that the respondents are not justified in proceeding with the impugned sale ignoring the guidelines of Reserve Bank of India for rescheduling the Installments/One Time Settlement are without any substance and need not be taken into consideration for the purpose of the present writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to work out the remedy of appeal as available under Section 17 of the Securitisation Act, 2002, if so advised.

G. ROHINI, J.

Dt. 25-9-2006
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